

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY2:06CV210-f
RECEIVED

United States District Court		District For the Middle District of Alabama, Northern Div.	
Name of Movant ARTRONE CHEATHAM	Prisoner No. 11101-002	Case No. CR.NO. 02-07-N	
Place of Confinement Federal Correctional Complex-Low, P.O. Box 9000, Forrest City, AR 72336-9000			
UNITED STATES OF AMERICA		V. ARTRONE CHEATHAM (name under which convicted)	
MOTION			
<p>1. Name and location of court which entered the judgment of conviction under attack United States District Court, For The Middle District of Alabama, Northern Division</p> <p>2. Date of judgment of conviction June 19, 2003</p> <p>3. Length of sentence 235 Months</p> <p>4. Nature of offense involved (all counts) One Count: Conspiring to distribute and possess with intent to distribute cocaine base(crack).</p>			
<p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input checked="" type="checkbox"/></p> <p>(b) Guilty <input type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: N/A</p>			
<p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input checked="" type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p>			
<p>7. Did you testify at the trial? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>			
<p>8. Did you appeal from the judgment of conviction? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>			

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9. If you did appeal, answer the following:

- Name of court: United States Court of Appeals, For the Eleventh Circuit.
- Result: Conviction Affirmed
- Date of result: August 27, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?
Yes No

11. If your answer to 10 was "yes," give the following information:

- Name of court: United States Court of Appeals, For the Eleventh Circuit.
- Nature of proceeding: PETITION FOR REHEARING EN BANC
- Grounds raised: (1) Lack of sufficient and independent evidence to establish conspiracy; (2) Joint trial caused the compelling prejudice against Cheatham; (3) Fatal variance between indictment alleging conspiracy to sell crack cocaine and evidence at trial; (4) No evidence to support conviction of Cheatham as to conspiracy to sell crack cocaine, therefore, a constructive amendment was made to the indictment; (5) Conspiracy not established, due to a buyer/seller relationship.
- Did you receive an evidentiary hearing on your petition, application or motion?
Yes No
- Result Application for Rehearing En Banc Denied.
- Date of result: October 27, 2004
- As to any second petition, application or motion give the same information:
 - Name of court: Supreme Court of the United States
 - Name of proceeding: Petition For a Writ of Certiorari
 - Grounds raised: Same issues as alleged in Application for Rehearing En Banc.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

(5) Result **Writ of Certiorari denied.**

(6) Date of result : **March 7, 2005**

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have ~~other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.~~

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one:

***** SEE MEMORANDUM IN SUPPORT OF MOTION*****

Supporting FACTS (state *briefly* without citing cases or law):

B. Ground two:

***** SEE MEMORANDUM IN SUPPORT OF MOTION*****

Supporting FACTS (state *briefly* without citing cases or law):

C. Ground three:

***** SEE MEMORANDUM IN SUPPORT OF MOTION*****

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four:

*** SEE MEMORANDUM IN SUPPORT OF MOTION ***

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

*** SEE MEMORANDUM IN SUPPORT OF MOTION***

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

ATTORNEY WHO REPRESENTED ME IN ALL OF THE PROCEEDINGS

(b) At arraignment and plea

Donald G. Madison, Esquire
418 Scott Street
Montgomery, Alabama 36104

(c) At trial

(d) At sentencing

(e) On appeal : **SAME AS LISTED ABOVE**

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Mar 1 2006
Date

Antonia Chalker

Signature of Movant